

REMARKS BY MICHAEL ANDERSON AND MARK ANDERSON IN SUPPORT OF H.B. 1104  
BEFORE THE HOUSE TOURISM COMMITTEE ON MARCH 21, 2024

Good morning. Thank you for the opportunity to speak before this committee in support of H. B 1104. My name is Michael Anderson. I am 42-years-old and I have cerebral palsy. Because of my disability, I need help with all the activities of daily living. I have attendants with me 24/7. I also use a wheelchair to get around.

I am very active in my community. I love going to museums, concerts, sporting events, and plays. But like many people with disabilities, I don't have a lot of money. I work part time for the Arc of Philadelphia as a legislative advocate, but most of my income comes from SSDI. So I like to get the most for my entertainment dollar. However, I often end up spending more than people who don't have disabilities. This is how that works.

As I mentioned before, I need to have an attendant with me when I go out. When I'm in my manual wheelchair, my attendants push me around. When I'm in my power chair, they help clear the way through heavy crowds. They open doors for me, they take me to the bathroom, they give me things to eat and drink. I couldn't do it without them. But when I try to go to a movie or a museum or a basketball game, the venues often want me to pay for myself and for my attendant. That means I have to pay twice as much as a person without a disability.

This has really bothered me over the years. Things finally came to a head some years ago when my favorite museum, The Franklin Institute, wanted to charge me and my attendant to attend. I asked them to change their policy, but they refused. They even sent me a letter from the Board of Directors saying they weren't going to let anybody get in for free.

This made me pretty angry. So I got in touch with Steve Gold at the Public Interest Law Center of Philadelphia, and we decided to sue the museum for violating the Americans with Disabilities Act (ADA). Under the Act, it is unlawful discrimination to provide a person with a disability access to a service "that is not equal to that afforded to other individuals." [42 U.S.C. § 12182(b)(1)(A)(ii)] In my opinion, making someone like me pay double for admission is not providing an equal benefit. In 2016, after three long years, the court agreed with me, and I won the case! [Anderson v. Franklin, 185 F. Supp 3d 628 (E.D. Pa. 2016)] Now I can go to the Franklin Institute and only pay for myself and not for my attendant.

Unfortunately, because this decision wasn't appealed to a higher court, the result in this case is only binding on The Franklin Institute. Any other venue in Philadelphia or in the rest of the Commonwealth can still charge double for people who enter with an attendant. However, I have been able to convince many venues in the Philadelphia area – like the Sixers, the Phillies, the Kimmel Center, the Eagles, the Art Museum -- to adopt a policy of allowing attendants in for free. However, these policies are often not well publicized, and, because they are voluntary, they can be changed at any time.

And for venues outside the Philadelphia area, or for travelling events that come to Philadelphia, charging for attendants is still commonplace. For example, when I went to my first Penn State football game in 2022, I had to buy two tickets. And when the Ringling Brothers Circus came to town this February, I had to buy two tickets. And sometimes, even for local events, like the Big Five City Series tripleheader last fall, I had to buy two tickets.

That's why we need a new law. Even though I think the ADA already requires venues to allow attendants in for free, we're never going to get a decision to that effect that is binding statewide. Most venues, if threatened by a lawsuit, will just let the individual who sues get a free ticket for the attendant, and that will be that. Other people will still get charged twice. This proposed bill will settle the problem once and for all. And not only would it be great for Pennsylvanians, it would also set an example for the entire country. This would be the first law of its kind in the nation. So let's make Pennsylvania a trendsetter and approve H.B. 1104, aka "Michael's Law."

Thank you for your attention.

Good morning. My name is Mark Anderson. I am Michael's father. Thank you as well for the opportunity to speak here today. I fully support H.B. 1104 and urge the legislature to enact it. As a former law professor, I was heavily involved in Michael's lawsuit against The Franklin Institute, and I was delighted when we received a successful result. Personally, I was hoping the museum would appeal the decision to the Third Circuit, because I was confident that we would also win a positive result there. And that decision, unlike the trial court one, would have been binding in all of Pennsylvania as well as Maryland, Delaware and the Virgin Islands. However, I'm sure The Franklin Institute thought they would lose the case as well and didn't see the point of taking the appeal.

I think Michael has made a good case for supporting this bill. What I'd like to do is spend some time talking about and refuting potential arguments against it. In analyzing the bill, I am approaching it from the perspective of the ADA and what it requires. The ADA itself makes it clear that it does not prevent states from granting people with disabilities even more rights than those found in the ADA. [In the language of the law, the ADA does not "invalidate or limit the remedies, rights or procedures of ... any state ... that provide greater or equal protection for the rights of individuals with disabilities." 42 U.S.C § 12201(b).] Nevertheless, I think the case for passing this bill is even easier to make when it can be shown that the bill simply clarifies what the ADA already requires rather than granting rights that go above and beyond.

I can think of three major complaints that could be raised against this bill. First, some might argue against this bill because it allows people to get something for nothing. Attendants shouldn't get to enjoy a concert or a ballgame or a museum and not have to pay for it, the argument goes. Our disability laws are meant to help people with disabilities, not to give out free passes for able-bodied attendants. After all, businesses can only stay in business by charging people for the services they provide.

I see two problems with this argument: first, attendants don't necessarily want to go to the event their client has chosen to see. The attendant is going because their client is going. It's their job. Many attendants aren't into sports, or into pop music, or into science museums. But their job requires them to be there. To say they are getting something for nothing often overstates the case. (To speak from personal experience for a moment, I would have been happy not to go to any Dave Matthews Band concerts, let alone five or ten. And as much as I might like the Sixers or the Phillies, I often prefer not to go to the games in person, because I can't turn them off if things are going badly, and I can't go home unless my client wants me to.) Now if Michael were able-bodied, and he invited some friends along, he would, of course, expect them to pay for their own tickets, but that is because the friends have decided on their own that they want to come. That is clearly not the case here.

Moreover, this argument misses the point. The focus must be on the person with the disability. They are the ones that are forced to pay double, they are the ones being discriminated against. And if a free pass is necessary to end that discrimination, then that is what must be provided. If an attendant happens to get something enjoyable out of it, that is irrelevant.

Second, some might argue that this bill creates an undue burden on businesses. (This is the standard used under the ADA for exceptions to the non-discrimination

requirement.) Under the ADA, a venue operator doesn't have to make every possible change that might be necessary to place people with disabilities on an equal footing with their able-bodied peers. Some changes are just too expensive, such as putting accessible seats in every possible location at a stadium or concert venue; others would require too much of an alteration in the service provided, such as making roller coasters slow down so that they could be enjoyed by people with autism who must be protected from excessive stimulation, or by people whose disability requires them to remain in their wheelchairs.

That, however, is not the case here. There are two different situations to consider – when venues have excess capacity and when they don't. Where venues have excess capacity, such as museums in non-peak periods, not charging for attendants doesn't make the venue lose money they could have made elsewhere. A ticket not sold to an attendant can still be sold to someone else. Moreover, the attendant wouldn't be coming to the venue if they were not working, and the person with a disability might not come at all if they had to pay for their attendant. Essentially, the venue isn't really losing any money at all.

Even when there is no excess capacity, as in a sold-out concert or sporting event, this still does not necessarily mean that there is an undue burden. True, a seat that is given to an attendant for free could have been sold to another person for market value, and the venue will lose the revenue from that ticket sale. But remember, under the ADA, a venue is only allowed to discriminate if not doing so creates an undue burden. Here, the burden does not become undue unless there are a large number of people with disabilities who require attendants, and, therefore, a large number of tickets that are given away for free that could have been sold to other customers. And that is rarely, if ever, the case. In our litigation with The Franklin Institute, for example, the museum was unable to show that significant numbers of people with disabilities were already using their facilities, let alone significant numbers of people with disabilities who also needed attendants. One of the basic problems today is that there aren't enough people with disabilities who are currently taking advantage of what their communities have to offer. We need to encourage and not discourage their increased participation.

Finally, some might argue that this policy will be subject to abuse. Even if, the argument goes, people with disabilities who need attendants to be able to take advantage of the services of particular venues shouldn't have to pay for them, once word gets out that there are free tickets to be had, unscrupulous people will take advantage of the system to get free tickets for friends who agree to be "pretend attendants."

As much as I don't like the idea that people might try to game the system, I recognize the reality that there are always people out there who are willing to bend the rules to save a buck. However, the problem is certainly manageable. Under this bill, individuals with a disability are not required to pay for an attendant if that attendant "is necessary to enable [that] individual to attend [the] event." All venues would certainly be free to ask the person requesting the free admission (or that person's representative, as people who have intellectual disabilities can also qualify for free attendant admission under this law, but they may lack the legal capacity to make such a certification) to certify that the attendant is indeed necessary for them to use the venue. The venue could also remind the person that false statements could result in subsequently being billed for the attendant as well as in forfeiting their right to attend the venue in the future. I believe most people would feel very uncomfortable lying in such a situation.

Unfortunately, there is no documentation which currently exists that would demonstrate eligibility for free attendant admission for all who qualify, although it is available for some. For example, most Pennsylvanians with physical disabilities who require attendant care services to continue to live in their own home receive such services under the Medicaid Home and Community-Based Services Waiver Program. Those individuals (like my son) do have a Medicaid card which shows their eligibility for services under the waiver program. In Michael's case, it says he is a part of Community HealthChoices. However, other people with physical disabilities who receive their services under different programs, like Act 150, or who privately pay for such services, do not have any such card. In addition, people who have intellectual disabilities and receive attendant care services under the Office of Developmental Programs also have no such card. The attendants, themselves, also frequently don't have worker ID cards, and even if they do, those cards don't identify the people that they work for.

If experience under the new law suggests some potential issues with abuse, there will certainly be time and opportunity to revisit the law and consider other options. But at this point in the process, it is definitely premature to create additional barriers to access this basic right to be treated fairly and equitably when it comes to participating in community activities in the Commonwealth.

Accordingly, because the case for free attendant admission is clear, and because the arguments against such admission can be readily refuted, I urge you to enact Michael's law without delay.

Thank you for attention.

